IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4542 of 2000

With

SPECIAL CIVIL APPLICATION No. 6613 of 2000

To

SPECIAL CIVIL APPLICATION No. 6768 of 2000

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 of any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

STATE OF GUJARAT - Petitioner(s)

Versus

ISHAWERBHAI FULABHAI PATENWADIYA & 157 - Respondent(s)

==========

Appearance :
MR ARUN D. OZA GOVERNMENT PLEADER for Petitioner No(s).: 1.

MR D S VASAVADA for Respondent No(s).: 1.
None for Respondent No(s).: 2, 3, 4, 5,
6, 7, 8, 9, 10, 11, 12, 13, 14,
15, 16, 17, 18, 19, 20, 21, 22, 23,

24, 25, 26, 27, 28, 29, 30, 31, 32,
33, 34, 35, 36, 37, 38, 39, 40, 41,
42, 43, 44, 45, 46, 47, 48, 49, 50,
51, 52, 53, 54, 55, 56, 57, 58, 59,
60, 61, 62, 63, 64, 65, 66, 67, 68,
69, 70, 71, 72, 73, 74, 75, 76, 77,
78, 79, 80, 81, 82, 83, 84, 85, 86,
87, 88, 89, 90, 91, 92, 93, 94, 95,
96, 97, 98, 99, 100, 101, 102, 103, 104,
105, 106, 107, 108, 109, 110, 111, 112, 113,
114, 115, 116, 117, 118, 119, 120, 121, 122,
123, 124, 125, 126, 127, 128, 129, 130, 131,
132, 133, 134, 135, 136, 137, 138, 139, 140,
141, 142, 143, 144, 145, 146, 147, 148, 149,
150, 151, 152, 153, 154, 155, 156,157.
==========

CORAM :HON'BLE MR JUSTICE KS JHAVERI

Date : 20/06/2005

ORAL JUDGMENT

1.0 In these petitions common facts and law are involved and hence, they are disposed of by this common judgment.

2.0 These petitions are arising from the judgment and award dated 23.07.1999 passed by the Industrial Tribunal, Nadiad, in Reference (ITN) No.738 of 1998 (Main), whereby the Tribunal had directed the petitioner State that those workmen whose names were shown in the list presented by the Union and who had completed five years of service as on 01.01.1986 and who had completed 240 days of service in any one of the preceding years, shall be treated as work-charged employees. As regards the difference of pay, the petitioner State was directed to pay the difference of the amount during the period from 01.01.1996 to the publication of the award, within a period of three months from the date

of the said award.

3.0 The petitioner herein is the Irrigation Department of the State of Gujarat and is discharging the functions of management of the dams and canals, their maintenance and distribution of water through such canals. The function is directly connected with the betterment of agricultural activities throughout the State.

3.1 It is the case of the petitioner State that since the Department was engaged in irrigation works and different projects were going on at different places, additional staff / labourers were employed on temporary basis time and again, and after the work for which such labourers were appointed was over, their services were dis-continued. But, since at some places, it was noticed that the projects under which such workers / labourers were engaged had been continued for number of years and some of them were found to be continuously discharging duties as daily wagers, the petitioner State had implemented a Policy by Circular dated 17.10.1988. According to the said Government Resolution dated 17.10.1998, subject to certain terms and conditions, daily wagers who had not completed five years of service as on 01.10.1988, were to be paid minimum wages per day and on completion of 240 days in the first year of service from the said day, were to be given benefits of Sundays, National Holidays and medical facilities. Further, it was provided that daily wagers who had completed more than five years of service and less than ten years of service were to be paid fixed salary of Rs.750.00 per month and Dearness Allowance as may be applicable; and, the persons who had

completed more than ten years of service were to be appointed in the Pay-scale of Rs.750.00 - Rs.940.00 from the date of the said Circular.

3.2 Thereafter, Government Resolution dated 30.03.1989 came to be passed, the effect of which was that promotion from daily wagers to work-charge employees was completely banned. The respondents herein, who were initially engaged as daily wagers, filed their Chart of Demand before the Labour Commissioner, wherein they had demanded the benefit of work- charge employees. The dispute was ultimately referred to the Industrial Tribunal, Nadiad, which passed the impugned judgment and award which is under challenged before this Court in these petitions.

4.0 On 05.07.2000, this Court (Coram : Pradip Kumar Sarkar, J.) has passed the following order;

> "1. In all these petitions common facts and law are involved. These petitions are arising from the common judgment and award passed by the Industrial Tribunal, Nadiad in 12 Reference Cases on 23.07.1999.
>
> 2. Heard the learned Government Pleader Mr. A.D.Oza and Ms. Binoda Gajjar learned AGP for the petitioners in all the cases. It appears that 12 References were registered before the Industrial Tribunal, Nadiad at the instance of Agricultural and rural Labour Association. In all these Reference Cases 1579 workmen are involved who are the members of the said Association.
>
> 3. SCA Nos. 5318/2000, 6341/2000 and 6343/2000
>
> Notice may be issued on the respondents through the union making the notice returnable after four

weeks. Petitioner to take steps to serve the notice on the respondents within seven days.

4. Heard Mr. A.D. Oza, learned Government Pleader and Ms. Binoda Gajjar learned AGP on interim relief. Interim matter will be heard on the returnable date. Notice as to interim relief be issued to the respondents through the Association making it returnable on the same date.

5. The learned Government Pleader submitted that the Industrial Tribunal, Nadiad has committed a serious error in passing the judgment award passed relying on the Government Circular dated 04.07.1973. Learned Government Pleader further submitted that the said Circular regarding benefits to the given to the daily wagers has been cancelled by the Government Circular dated 31.03.1989. The learned Government Pleader further submitted that the Industrial Tribunal did not consider this aspect and accordingly came to a wrong conclusion in deciding the Reference. Learned Government Pleader also submitted that the Union has mentioned some names of workers who were never engaged by the Government as labourers. Having regard to the submissions of the learned Government Pleader, I am of the views that an interim order is called for. Interim matter will be heard on the returnable date. In the meantime, the common judgment and award passed on 23.07.1999 in Reference Case No.738 of 1998 and allied cases passed by the Industrial Tribunal, Nadiad shall remain stayed until further orders.

Rule in all the cases including the cases which have been registered on the basis of one page petition.

One set of Notice may be served on the Union and individual Notices may not be served on the members of the Association as the notice is ordered to be served on the Association. D. S.”

5.0 Mr. Arun D Oza learned Government Pleader appearing for the petitioner State has contended that the benefits flowing from the said Circular dated 17.10.1988 were extended to the respondents-workmen herein who were, at the

relevant point of time, working as daily wagers. He has submitted that after having availed of the benefits flowing the said Government Resolution dated 17.10.1988, it is now not open to the respondents-workmen and their Union to take a contrary stand by demanding the benefits under the Government Resolution dated 04.07.1973.

5.1 Mr. Oza has further contended that looking to the nature of duties and the functions discharged by the said Department of the petitioner State, it cannot be said to be an "Industry" under the Industrial Disputes Act, 1947. He has further submitted that no proceedings could have been initiated under the provisions of the said Act. He has, therefore, submitted that the Industrial Tribunal has committed a serious error by concluding that the petitioner Department was an "Industry" within the definition of "Industry" under the I. D. Act.

5.2 Mr.Oza has further contended that the Tribunal ought to have considered the fact that the Circular dated 04.07.1973 was no more in force, since the same was subsequently canceled by Government Resolution dated 31.03.1989. He has, therefore, submitted that the Tribunal has erred in observing that the Resolution dated 04.07.1973 makes a provision for automatic time bound promotion of daily wagers on a work-charge establishment, and therefore, the respondents-workmen are also eligible to be promoted to the said posts.

6.0 Mr.D S Vasavada learned advocate appearing for the

respondents has submitted that the issue in question is covered by the Full Bench of this Court in the case of Gujarat Forest Producers, Gatherers & Forest Workers Union v. State of Gujarat **reported in** 2004(2) G.L.R. pg.1488, wherein it has been held that having regard to the subjects allotted to it under the Rules of Business, the entire Department cannot be termed as an "industry" and that an activity or undertaking of the Department can be categorized as "industry" if it satisfies the triple test formulated in the Bangalore Water Supply case reported in A.I.R. 1978 S.C. 548 and does not fall within the exceptions culled out therein.

7.0 I have heard learned counsel for the parties and have perused the documents placed on record. The contention raised by Mr.Oza that the respondents-workmen cannot be given the benefits flowing from the Government Resolution dated 04.07.1973 is required to be accepted, inasmuch as when the benefits flowing from the Government Resolution dated 17.10.1988 were already extended to the respondents workmen, the benefits flowing from the Government Resolution dated 04.07.1973 could not have been extended to the respondents-workmen. The Tribunal ought to have considered the fact that each case is required to be considered individually, keeping in mind the various terms and conditions stipulated in the said Government Resolution dated 17.10.1988 and the benefits accruing thereto to each of the workmen. By passing the impugned judgment and award, the Tribunal has wrongly burdened the State Exchequer.

7.1 In my opinion, the Tribunal has miserably failed in

arriving at the conclusion that the respondents-workmen were entitled to get the benefits of Government Resolution dated 04.07.1973, since the said Resolution was subsequently canceled by another Government Resolution dated 31.03.1989 by which promotions from daily wagers to work-charge employees was completely banned.

7.2 In above view of the matter, I am of the opinion that since the benefits flowing from the Government Resolution dated 17.10.1988 were already extended to the respondents workmen, the Industrial Tribunal ought not to have directed the petitioner State to extend the benefits of the previous Resolution dated 04.07.1973 also. The respondents workmen cannot be given the benefits of both the Government Resolutions.

8.0 With the consent of the parties, the following order is passed. The impugned order of the Industrial Tribunal, Nadiad, dated 23.07.1999 directing the petitioner State to extend the benefits of the Government Resolution dated 04.07.1973 to the respondents workmen is ordered to be quashed and set aside in view of the fact that the respondents-workmen were already given the benefits of Government Resolution dated 17.10.1988. The matters are ordered to be remanded back to the Industrial Tribunal, Nadiad, for adjudication afresh.

8.1 The Industrial Tribunal, Nadiad, is directed to re-consider the issue on the point as to whether the respondents-workmen are covered under the scheme or not and

shall adjudicate each case individually, keeping in mind the facts and the benefits received by each of the workman under the Government Resolution dated 17.10.1988. It is, however, clarified that if the benefits flowing from the Government Resolution dated 17.10.1988 have already been extended to the respondents-workmen, then the Industrial Tribunal shall adhere to the said Government Resolution.

8.2 The Industrial Tribunal, Nadiad, is directed to complete the aforesaid exercise within a period of six months from the receipt of writ of this order.

8.3 With the above directions, these petitions stand disposed of. Rule is made absolute to the aforesaid extent with no orders as to costs.

(K. S. JHAVERI, J.)

pravin/*